IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 7219 & 11148 of 1997

(1) W.P.No. 7219 of 1997

Between:

M/s. Deccan Syntex Limited,(formerly M/s Golconda Investments Ltd.), rep. by its Managing Director, Flat No.203, Moghul Apartments, Basheerbagh, Hyderabad.

..... PETITIONER

AND

1 The A.P.State Electricity Board, Rep. by its Member-Secretary,
Vidyuth Soudha, Somajiguda,
Hyderabad.
2 The Superintending Engineer (Operation Circle), A.P.State Electricity Board, Medak at Sanga Reddy.
3 The Assistant Divisional Engineer (Operation), A.P.State Electricity Board, Sanga Reddy, Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of "Certiorari" after calling records from the 2nd Respondent and quash the order No. SE/O/MDK/SAO/HT/D.No.1347/97, dated 17-3-1997 passed by the 2nd Respondent.

Counsel for the Petitioner : Mr.N.PRAMOD

Counsel for the Respondents : SMT.M.VINOBHA DEVI, SC FOR APSEB

(2) W.P.No. 11148 of 1997

Between:

M/s. Satyanarayana Rao & Boiled Rice Mill, Rep. by its Managing Partner, Muvva Subbaiah, S/o. Ankaiah, Medarametla,
Korisapadu Mandal, Prakasam District.

..... PETITIONER

AND

1 The A.P.S.E.B., Rep. by its Member Secretary,
Vidyut Soudha, Somajiguda, Hyderabad.
2 The Chief Engineer/Electricity, A.P.S.E.B.,
Nellore Zone, Vidyut Bhavan, Nallore-4.
3 The Superintending Engineer, Operation Circle,
A.P.S.E.B., Ongole, Prakasam District.
4 The Assistant Divsional Engineer, Operation Circle,
A.P.S.E.B., Ongole, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the order of the 3rd Respondent passed in F.A.O. Proceedings Lr.No.SE/O/OGL/AF(C)/F.Doc/BBNO/8454/ 96, dt. 12-11-1996, which was confirmed by the 2nd Respondent in proceedings Lr.No.CEE.NZ.NLR.Coml.F.BB.D.No. 1206/97 dt. 10-4-1997 as illegal, arbitrary, without jurisdiction and contrary to the provisions of the Indian Electricity Act, and violative of principles of natural justice and consequently to set-aside the same.

Counsel for the Petitioner : Mr.I.GOPALA REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, SC FOR APSEB

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 7219 & 11148 OF 1997

COMMON ORDER:

Heard Sri C.V.Nagarjuna Reddy and also Sri I.Gopal Reddy, learned counsel appearing for petitioners respectively in these two writ petitions and Smt.M.Vinobha Devi, learned Standing Counsel appearing on behalf of respondents.

After hearing the counsel on either side and also on perusal of the material, the only short question which requires to be considered is as to the remedy available to the petitioner under the provisions of the Indian Electricity Act, 1910 or Indian Electricity (A.P. Amendment) Act, 2000 (Act 35 of 2000). Apart from change in the law, which came into force under the aforesaid amendment, the question in fact revolves around the two decisions of this Court in Klayman Porcelains Limited v. Superintending Engineer, Operation, Mahabubnagar Circle, APSEB, Hyderabad and Brilliant Industries Limited (Vaccines Division), Patancheruvu v. Transmission Corporation of A.P. Limited (A.P. TRANSCO), Hyderabad. The facts, which are not in dispute and which are required for the purpose of assertion of the aforesaid question are that admittedly in these two writ petitions, inspection and check was made on 7.12.1993 and 24.7.1996 respectively, wherein having found certain meter defects, proceedings have been initiated and ultimately provisional assessment was made by the Superintending Engineer concerned and after its final assessment, the matter was carried in appeal and on that basis, the same was confirmed. The objection raised is as to the maintainability of the writ petitions in view of the availability of remedies under the provisions of the aforesaid Act. Considering the similar question, the Full Bench of this Court in Klayman Porcelains Limited v. Superintending Engineer (supra) and more so taking into consideration the scope and ambit of Section 26(6) of the Indian Electricity Act, 1910, it was held that the authorities concerned as aforesaid have no power to go into such dispute. Whereas under the provisions, the matter has to be adjudicated by an independent agency namely, the Electrical Inspector. Therefore, by applying the said principles squarely and in view of date of cause of action arising, it can be taken that the authorities

concerned who have decided these two matters both at primary and appellate levels, could not have taken up the said cause and in fact should have referred the dispute to an Electrical Inspector as contemplated thereunder.

However, in the meanwhile, the provisions of Indian Electricity Act, 1910 has undergone Amendment under Act 35 of 2000, which is known as A.P. Amendment Act, whereby, Section 49(i) was added, whereunder the Special Court constituted under this Act, has to decide all such disputes and therefore the remedy would lie only before the Special Court. Considering the scope and ambit of Section 49(i) of the said Amendment Act, a Division Bench of this Court held that the consumer who is aggrieved by the assessment of energy on the alleged ground of meter disputes, has got alternative remedy to approach the Special Court for such dispute. Therefore, it has to be taken that any such dispute shall be decided only by the Special Court, but not by any of the authorities constituted under the provisions of the Indian Electricity Act, 1910.

Considering the very aspect, a learned single Judge of this Court, by his order dated 3.12.2004 in W.P.No.7988 of 2004 has held that having regard to the cause of action arising in that case subsequent to the introduction of amended Act, the consumer has got appropriate remedy to approach the Special Court and therefore directed the parties to pursue the said appropriate remedy.

In view of the aforesaid principles, since the cause of action arises in these two matters is much prior to the introduction of amended act, necessarily it has to be held that the remedy of the petitioner/consumer only lies with the Chief Electrical Inspector. Though an assertion was made on behalf of respondents herein that having regard to the provisions of the amended Act, the said remedy would not continue to remain in force. However, by taking into consideration the saving clause under the amended act and also the fact that the posts of Electrical Inspector/Chief Electrical Inspector having been abolished, it cannot be said that a right which has been vested, cannot be taken away by the subsequent amendment, more so, when the amended act has no retrospective operation. It is now well established that any such amendment to the substantial piece of legislation, would not necessarily contemplate any retrospective application unless and until the same is specifically provided for. In any of the provisions of the amended act, there is no such applicability with retrospective operation. In the circumstances, it has to be held that following the earlier decision of the Full Bench in Klayman Porcelains Limited v.

Superintending Engineer, Operation, Mahabubnagar Circle, APSEB, Hyderabad (supra), the petitioners have got alternative remedy and have to approach the Chief Electrical Inspector concerned for deciding the dispute.

The writ petitions are accordingly dismissed. However, the petitioners are at liberty to approach the Chief Electrical Inspector concerned for a decision and the said authority shall pass appropriate orders on merits in accordance with law, as expeditiously as possible, after giving proper notice and opportunity to the parties concerned.

No costs.

_____

B.PRAKASH RAO, J.

Dated: 24-1-2005

DA

To

1 The Member Secretary, A.P.State Electricity Board,
Vidyuth Soudha, Somajiguda, Hyderabad.
2 The Superintending Engineer (Operation Circle), A.P.State Electricity Board, Medak at Sanga Reddy.
3 The Assistant Divisional Engineer (Operation), A.P.State Electricity Board, Sanga Reddy, Medak District.

4 The Chief Engineer/Electricity, A.P.S.E.B.,
Nellore Zone, Vidyut Bhavan, Nallore-4.
5 The Superintending Engineer, Operation Circle,
A.P.S.E.B., Ongole, Prakasam District.
6 The Assistant Divsional Engineer, Operation Circle,
A.P.S.E.B., Ongole, Prakasam District.

7 Two CD copies.